

CC-6-1999-032



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 14 1989

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DEC 02 1999
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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER Directive 9330.2-07

SUBJECT: Notification of Out-of-State Shipments of Superfund Site Wastes

FROM: Jonathan Z. Cannon, Acting Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Regional Administrators
Regions I- X

PURPOSE

The purpose of this memorandum is to implement EPA's policy that prior to the off-site shipment of Superfund wastes to an out-of-State waste management facility, EPA Regional personnel will provide notice to that State's environmental officials.

BACKGROUND

A number of States and localities have expressed the concern that they are not formally notified before unusually large amounts of Superfund wastes are transferred to permitted facilities within their States for treatment, storage or disposal. The Agency believes that such notice may be appropriate, and that indeed, such notice may be helpful in facilitating the safe and timely accomplishment of Superfund waste shipments. Thus, EPA has decided to adopt a policy of providing States with prior notification of off-site shipments of Superfund wastes. (Because the State in which the site is located participates in the remedy selection process, and thus is already aware of Superfund remedies within that State, this policy will apply only to out-of-State waste shipments.)

OBJECTIVES

The objectives of this policy are to alert States to shipments of wastes from out-of-State Superfund sites, so that the State may take any steps necessary to facilitate the safe transfer of waste, and to respond to any public inquiries concerning the waste movements.

IMPLEMENTATION

Effective immediately, the Region should implement the notification of Superfund waste shipments. The Agency intends that notice under this policy should be routinely provided to State environmental officials for all remedial actions and "non-time critical" removal actions involving the off-site shipment of Superfund wastes that are known to Regional officials, including waste shipments arising from Fund-lead responses, State-lead responses, Federal facility responses, and responses conducted by PRPs (emergency and time-critical removals are not covered by this policy). This policy pertains to all such off-site shipments, not merely response actions involving "unusually large" shipments; however, you may, in your discretion, decide that notice is unnecessary for shipments of small amounts of wastes (e.g., 10 cubic yards).

The notification should be in writing, and should set out the following information, where available: (1) the name and location of the facility to which the wastes are to be shipped; (2) the type and quantity of waste to be shipped; (3) the expected schedule for the waste shipments; and (4) the method of transportation. In addition, the Region should notify the State of major changes in the shipment plan, such as a decision to ship the wastes to another facility within the same State, or to a facility in another State.

The identity of the receiving facility and State will be determined by the lead agency following the award of the response action contract. The Region should provide relevant information on the off-site shipments as soon as practicable after the information becomes available to the Region; unless the information is unavailable, it should be provided before the wastes are actually shipped.

Because CERCLA actions may be carried out under a number of mechanisms and by a number of parties (e.g., lead State agencies, other Federal agencies, PRPs), OSWER plans to issue additional guidance to help Regions to implement this notification policy. That additional guidance will address: modification of contracting procedures and contract terms in order to provide for routine notification under Fund-lead response actions; modification to cooperative agreements in order to provide for routine notification under State-lead response actions; model provisions for orders and settlement agreements with PRPs in order to provide for routine notification under PRP response actions; and model provisions for Interagency Agreements to provide for notification in Federal facility response actions. The guidance may also attempt to establish levels below which such notice would not be necessary. OSWER will minimize the

burden on the Regions by placing the responsibility for prior notification on the response action contractor where appropriate.

Should you have any questions concerning this policy or its implementation, please contact William O. Ross of my staff at FTS 382-4645.